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U.S. Citizenship and Immigration Services

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JUL 30 2007

FILE: LIN 05 132 50046 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits additional evidence. For the reasons discussed below, the petitioner has not overcome the director's concerns.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Magnetic Materials and Superconductors from the University of Putra, Malaysia. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

As noted by the director, in response to the director's request for additional evidence, the petitioner asserted that he was "not actually requesting a national interest waiver as it is legally termed. But since

I do not have an employer in the United States at the time I put forward the petition, I thought it would be reasonable to be in there first then getting employed is all about contact establishments." The director concluded:

> A petitioner does not qualify for a waiver of the job offer merely because he or she has an advanced degree or is an alien of exceptional ability without a U.S. employer. It remains that, by law, an alien seeking admission as a member of the professions holding an advanced degree must generally obtain a labor certification and the burden is on the petitioner to establish that it is in the national interest to waive that requirement.

On appeal, the petitioner asserts that he has attempted to make contacts with prospective U.S. employers "so that they could take over as 'petitioner and employment certificate grantors.'"

We concur with the director that the visa classification sought normally requires an Alien Employment Certification approved by the Department of Labor. An alien cannot self-petition under this classification in the hope that he will secure an employer as a sponsor in the future. 8 C.F.R. § 103.2(b)(12); *See also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971); *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981). The only waiver of the alien employment certification requirement for the classification sought is the national interest waiver. The petitioner is not a physician seeking employment in an underserved area as defined at section 203(b)(2)(B)(ii), the only class of aliens for whom the national interest waiver standard is statutorily defined. Thus, we must adjudicate the petitioner's request for a waiver of the alien employment certification under the standard set forth in *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 215.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must

be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, physics research. Regarding the proposed national benefit, in response to the director's request for additional evidence, the petitioner stated that his area of specialty, superconductivity research, is related to future technology and expressed his conviction that he would be "a good contributor if given a chance of joining any superconductivity research group in the U.S. while a citizen. The petitioner concludes: "To the best of my ability, I'm sure I would match the standards of the available U.S. workers (my age mates), on the field of superconductivity research and/or teaching physics and mathematics at college and university level."

The director concluded that the record did not contain sufficient evidence regarding the petitioner's proposed employment to evaluate whether the proposed benefits of his work would be national in scope. On appeal, the petitioner submitted evidence that he had been invited to present his work at the 2006 Materials Research Society but was unable to obtain a visa in time. He asserts that had he attended, he would have had an opportunity to make contact with prospective U.S. employers. The petitioner also submitted a review of a recent manuscript concluding that his work would be "an article of particular interest" and requesting names of researchers to e-mail upon publication to ensure that the article would be "widely read."

Typically, we rely on reports about a specific area of research or the opinions of experts explaining the proposed benefits and how they will be national in scope. The record is not supported by any expert reference letters. Even if we were to conclude that any research breakthroughs in superconductivity will produce benefits that are national in scope, the petitioner must still demonstrate that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Ultimately, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot

suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

As stated by the director, at issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. On appeal, the petitioner underlines this language and marks it with a question mark. We concur with the director. The national interest waiver of the statutorily required alien employment certification is an extra benefit above and beyond classification as an advanced degree alien and, thus, requires an extra showing beyond mere possession of an advanced degree and accomplishments consistent with that degree. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, the petitioner submitted his curriculum vitae and degree. According to his self-serving curriculum vitae, the petitioner was working as a postdoctoral fellow at Kyoto University and had authored 13 papers either published or presented at a conference. The director requested evidence of the petitioner's impact in the field. In response, the petitioner submitted a letter affirming that he is now a senior lecturer at the Universiti Teknologi Petronas in Malaysia, seven articles authored by the petitioner and an article by a coauthor citing their joint work.

The director concluded that it is inherent to the petitioner's occupation to publish his research results and concluded that the record lacked evidence of the impact of this work, such as evidence that it was widely cited.

On appeal, the petitioner submits evidence that three of his articles were cited by between two and four independent research teams each. The petitioner also submits his contract with Kyoto University and correspondence purportedly demonstrating that he was not allowed to publish while he worked there and that he was otherwise exploited. The contract does not preclude the petitioner from publishing his work but appears to be a typical nondisclosure agreement for research results funded by a private company. Our conclusion that the contract does not preclude publication is bolstered by the fact that the petitioner has, in fact, published articles reporting on his research at Kyoto University. Moreover, the petitioner's refusal to agree to the proposed manner of his compensation, resulting in the university's failure to renew his position, does not demonstrate that he was exploited. Regardless, it remains that, whatever the circumstances, it is the petitioner's burden for the classification sought to demonstrate not only that he has published but also that these publications have proven influential in the field as a whole.

A maximum of four independent citations for an article is not persuasive evidence that the petitioner's work has been influential in the field as a whole. Moreover, the record lacks letters from independent researchers in the field who have been influenced by the petitioner's work. In fact, the record even lacks letters from the petitioner's own colleagues explaining his role in various research projects and their importance to the field.

Finally, we acknowledge that the petitioner has raised humanitarian issues based on the fact that he is from the Darfur region of Sudan, although he no longer resides there. While we are not unsympathetic to such claims, the petitioner has not demonstrated that Congress intended the national interest waiver as a humanitarian waiver for advanced degree professionals from troubled regions. Specifically, while Congress has created other humanitarian relief programs, the national interest waiver is not the appropriate classification for humanitarian considerations.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.